



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL CASE NO. 56 OF 2005

WANOI KARANI (Substituted by

JAMES MWANGI KARANI).....APPLICANT

VERSUS

MURIITHI KABUGI.....1ST RESPONDENT

STEPHEN MUNENE GACHUIRI.....2ND RESPONDENT

RULING

A. Introduction

1. This is a ruling on an application before this court is an application by the applicant dated 8th December 2006 seeking the following order:
-

*That this Honourable Court do order that the Deputy Registrar of this Honourable Court to sign the necessary documents to effect transfer of the suit land **Mutira/Kirunda/578** comprised of 0.81 Hectares in place of the 2nd Respondent **Stephen Munene Gachuiiri**.*

2. The original applicant swore an affidavit in support of the application and stated that it was necessary for his application to be allowed to satisfy this Honourable Court's decree given on the 9th November 2006.

3. On the 21st November 2006, the respondent filed a Notice of Appeal as well as an application for stay of execution of the decree herein aforementioned.

4. On the 16th May 2013, the Court of Appeal sitting in Nyeri dismissed the respondent's appeal.

5. The respondents have not filed a response to the plaintiff's application dated 8th December 2006 however, when the matter came up for hearing on the 25th September 2018, the Respondent gave his testimony.

B. The Responses

6. Mr. Njage for the applicant submitted that the application was not opposed and as such should be allowed in terms of prayer 1.

7. The 2nd respondent acting in person on behalf of the respondents submitted that he opposed the application on grounds that he bought the suit land **Mutira/Kirunda/578** and the applicant wants to take it away from him.

8. He further submitted that judgement had been delivered in favour of the applicant however, he opposed the same. He submitted that he had lodged an appeal but was told it was out of time. The 2nd Respondent further admitted to losing in the court of appeal.

9. In his response, Mr. Njage for the Applicant prayed for the grant of orders as pleaded in the application as the Respondent had lost the case in the Court of Appeal.

C. The Determination

10. Section 98 of the Civil Procedure Act upon which the Application in consideration is anchored stipulates as follows: -

“Where any person neglects or refuses to comply with a decree or order directing him to execute any conveyance, contract or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions, if any, as it may determine, order that the conveyance, contract or other document shall be executed or that the negotiable instrument shall be endorsed by such person as the court may nominate for that purpose, and a conveyance, contract, document or instrument so executed or endorsed shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it.”

11. I do note that this suit has been in the courts for more than three decades now and thus appreciate that there must be an end to litigation. The applicant herein got judgement in his favour way back on the 9th day of November 2006. The respondent herein unsuccessfully moved the Court of Appeal in the said judgment. This is admitted by the respondent in his testimony before court.

12. Prior to this, this Court had entertained the respondents on the merits of his case as against the claims by the applicants herein and found in favour of the applicant. The Court of Appeal upheld the same. As such, this court should not be swayed by the Respondents testimony during the hearing of the application subject of this ruling.

13. Consequently, it is my opinion that there is nothing barring this court from allowing the Applicants right to enjoyment of the fruits of his judgement. I associate myself with the position adopted by **Majanja, J.** in **REPUBLIC VS TOWN CLERK OF WEBUYE COUNTY COUNCIL & ANOTHER HCCC 448 of 2006** that: -

“...a decree holder’s right to enjoy fruits of his judgment must not be thwarted. When faced with such a scenario the Court should adopt an interpretation that favours enforcement and as far as possible secures accrued rights. My reasoning is underpinned by the values of the Constitution particularized in Article 10, the obligation of the court to do justice to the parties and to do so without delay under Article 159 (2) (a) & (b) and the Applicant’s right of access to justice protected under Article 48 of the Constitution.”

14. I am of the considered opinion that the applicant has satisfied the court that there is urgent need to have the over ten (10) years old decree executed.

15. I find the application merited and allow it as prayed.

16. It is hereby so ordered.

DELIVERED, DATED AND SIGNED THIS 19TH DAY OF NOVEMBER, 2018.

F. MUCHEMI

JUDGE

In the presence of: -

Mr. Njagi for Mahan for Applicant

2nd Respondent